HONOURABLE SRI JUSTICE B. SESHASAYANA REDDY

WRIT PETITION No. 10652 OF 2005

Dated 07-12-2005

Between :

Mohd. Raziuddin, son of late Mohd. Moinoddin, aged about 51 years, Occupation : Government Service, resident of 4-114/F/1, Saichitranagar Colony, Ramanthapur, Uppal, R.R. District.

….Petitioner.

And :

1. The Municipal Commissioner, Uoppal Kalan Municipality, Uppal, R.R.District and another.

…Respondents.

ORDER :

This writ petition has been filed by Mohd. Raziuddin with a prayer to issue a writ or direction preferably writ of mandamus declaring the inaction of the 1st respondent-Municipality in not taking appropriate action with regard to the unauthorized constructions made by G. Ramireddy-2nd respondent despite representation dated 30-07-2003 and legal notice dated 24-11-2004, as illegal, contrary and violative of principles of natural justice.

2. The petitioner and 2nd respondent are the owners of adjacent houses. The petitioner complained that the 2nd respondent constructed a house without obtaining any permission. Thereafter, some understanding came to be reached between them and they reduced the terms into writing on 16-11-2003. When the 2nd respondent did not keep up the terms of understanding, the petitioner submitted a representation

dated 30-7-2003 and served lawyer's notice dated 24-11-2004 on the 1st respondent to take necessary action against the 2nd respondent for unauthorized constructions. As there is no action on the part of the 1st respondent despite receiving representation and lawyer's notice, he has chosen to approach this court by invoking the jurisdiction under Article 226 of the Constitution of India.

3. The respondents filed counter-affidavit. One M.S.S. Soma Raju has sworn to the counter-affidavit. It is stated in the counter-affidavit of the 1st respondent that the 2nd respondent has applied for permission to construct first floor on existing ground floor duly paying Rs.3305/- vide RT No.60596, dated 29-10-2003 towards advance building permission fee and under-ground drainage charges of Rs.5,460/- vide RT No.60598, dated 27-10-2003 and the same is refused by this respondent since the site was falling within the limits of FIL of Pedda Cheruvu on 07-11-2003. Paragraph 6 of the counter-affidavit needs to be noted and it is thus :

> "6. It is respectfully submitted that in reply to para 5 of the affidavit, I submit that it is not true that this respondent is not taking appropriate action with regard to un-authorized construction made by the 2nd respondent, despite the representation dt. 30-7-2003. The petitioner gave representation to this respondent and entered into agreement with the 2nd respondent, and the petitioner submitted the copy of understanding as such this respondent not taken any action. The ground floor building of 2nd respondent is an old existing building constructed in the year 1995, which is also agreed by the petitioner. Even though the 2nd respondent has fulfilled the conditions mentioned in the understanding agreement it is surprised that the petitioner approached the Hon'ble Court after the completion of construction as if he has constructed the building authorisedly."

4. Heard the learned counsel for the petitioner and the learned Standing Counsel for the 1st respondent and the learned counsel for the 2nd respondent.

5. The learned counsel for the petitioner submits that the 2nd respondent has made constructions unauthorisedly and therefore, the constructions made by the 2nd respondent are required to be dealt with in accordance with law by the 1st respondent-Municipality.

6. The learned Standing Counsel for the 1st respondent-Municipality submits that the petitioner and the 2nd respondent entered into a settlement on 16-11-2003 and

the petitioners placed on record a copy of settlement and thus the petitioner cannot be permitted to complain that the 1st respondent-Municipality has not taken any action against the 2nd respondent.

7. A fact remains that the petitioner and the 2nd respondent entered into certain terms and the said terms are reduced into writing on 16-1-2003. A copy of the settlement arrived at between them has been presented before the 1st respondent-Municipality.

8. In that view of the matter, the petitioner cannot be permitted to complain that the 1st respondent-Municipality has not taken any action on the constructions made by the 2nd respondent. If there are any violation of the terms of settlement, the petitioner has to work out remedies in a competent Civil Court. Therefore, writ petition is devoid of merits and the same is liable to be dismissed.

9. Accordingly, the writ petition is dismissed. No costs.

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Justice B.SESHASAYANA REDDY

Date : 07-12-2005.

Dvs

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